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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

HERMAN ENRIQUE WESTERHEYDE, et
al.,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70372

INS No. A70-642-052/053

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 7, 2002**

Before: CHOY, FERGUSON, and BOOCHEVER, Circuit Judges.

Herman Enrique Westerheyde (“Westerheyde”) and his wife, Guadalupe
Westerheyde petition for review of the Board of Immigration Appeals’ (“BIA”)

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

final decision dismissing their appeal from the denial of their applications for asylum and withholding of deportation under the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1253(h) (1994). We have jurisdiction under former 8 U.S.C. § 1105(a), as amended by the transitional rules in section 309(c)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. See Kalaw v. INS, 133 F.3d 1147, 1149-50 (9th Cir. 1997). We deny the petition.

In their petition, the Westerheydes argue that the BIA erred in finding that they were ineligible for asylum and withholding of deportation. Westerheyde alleges that, because he received threatening letters in his capacity as a local leader of the Christian Democratic Party and because guerrillas coerced him into treating their wounded men, he suffered past persecution on account of his political opinion and has a well-founded fear of future persecution on account of his political opinion. Mrs. Westerheyde's asylum claim is premised on her "membership in a particular social group" and is based on the danger she faces because of the alleged persecution suffered by her husband.

I. Asylum

We review the BIA's ruling that an applicant has not proven eligibility for asylum under the substantial evidence standard. Cardenas v. INS, 294 F.3d 1062, 1065 (9th Cir. 2002). An applicant is eligible for asylum if he or she is unable or

unwilling to return to his or her country of origin because of “a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]” 8 U.S.C. § 1101(a)(42)(A) (1994). If the applicant can establish past persecution based on one of the enumerated grounds, there is a rebuttable presumption that he or she has a well-founded fear of future persecution. Salazar-Paucar v. INS, 281 F.3d 1069, 1073-74 (9th Cir.), amended by 290 F.3d 964 (9th Cir. 2002).

The BIA’s ruling that Westerheyde did not suffer past persecution on account of his political opinion is supported by substantial evidence. The threatening letters he received were based on his political opinion, but they did not constitute past persecution because they were not “so menacing as to cause significant actual suffering or harm.” See Lim v. INS, 224 F.3d 929, 936 (9th Cir. 2000) (citation and quotation marks omitted). Further, even assuming *arguendo* that Westerheyde was persecuted when the guerrillas coerced him to provide them with medical treatment, there is nothing in the record which indicates that the guerrillas persecuted him on account of his political opinion. Cf. Sangha v. INS, 103 F.3d 1482, 1486-87 (9th Cir. 1997) (stating the requirements for establishing past persecution based on political opinion).

Westerheyde also argues that, even without the past persecution presumption, he established a well-founded fear of persecution based on one of the enumerated grounds. In order to establish a well-founded fear of future persecution based on one of the enumerated grounds, the applicant must establish that his or her fear is “subjectively genuine” and “objectively reasonable.” Salazar-Paucar, 281 F.3d at 1073. The two threatening letters, which were not accompanied by any other actions against Westerheyde or his colleagues, are insufficient to support an objectively reasonable fear of future persecution. See, e.g., Lim, 224 F.3d at 935 (in addition to death threats, applicant appeared on a death list and was followed, and three of his colleagues were murdered). Further, because Westerheyde’s problems with the guerrillas were not based on one of the enumerated grounds, they do not support an objectively reasonable fear of future persecution on account of one of the enumerated grounds. There is substantial evidence in the record supporting the BIA’s finding that Westerheyde did not establish a well-founded fear of future persecution based on one of the enumerated grounds and, therefore, was not eligible for asylum. Because Mrs. Westerheyde’s asylum claim was premised upon Westerheyde’s past persecution and fear of future persecution, her claim also fails.

II. Withholding of Deportation

An applicant is entitled to withholding of deportation if there is a “clear probability” that his or her life or freedom would be threatened in the country of deportation on account of his or her “race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1253(h)(1) (1994); Kataria v. INS, 232 F.3d 1107, 1112-13 (9th Cir. 2000). The standard for withholding of deportation is more stringent than the standard for asylum, and, therefore, failure to prove eligibility for asylum necessarily constitutes failure to prove eligibility for withholding of deportation. Cf. Ghaly v. INS, 58 F.3d 1425, 1429 (9th Cir. 1995). Because the Westerheydes are ineligible for asylum, they are also ineligible for withholding of deportation.

Petition DENIED.